



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**REGION 8**  
**999 18<sup>TH</sup> STREET- SUITE 200**  
**DENVER, CO 80202-2466**  
**Phone 800-227-8917**  
**<http://www.epa.gov/region08>**

September 26, 2006

Ref: 8ENF-L

SENT VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Gary Elfman  
Warwick Oil Company  
115 Main St.  
Warwick, ND 55381

Re: In the Matter of Warwick Oil Company  
Docket No. RCRA-08-2006-0006  
Administrative Complaint, Compliance Order and Notice of  
Opportunity for Hearing

Dear Mr. Elfman:

Enclosed is an Administrative Complaint, Compliance Order and Notice of Opportunity for Hearing ("Complaint") filed by the U.S. Environmental Protection Agency ("EPA") against Warwick Oil Company pursuant to its authority under section 9006 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6991e. EPA alleges in the Complaint that Warwick Oil Company's facility in Warwick, North Dakota violated the underground storage tank ("UST") requirements set forth at 40 C.F.R. part 280, subpart C.

Specifically, the Complaint alleges that Warwick Oil Company violated RCRA section 9003(c), 42 U.S.C. §6991b(c), and the regulations at 40 C.F.R. §280.31(b)(1) requiring the testing of cathodic protection systems on USTs. The violation was discovered during a scheduled inspection of Warwick Oil Company's facility on June 9, 2005. The Complaint proposes a total penalty of \$18,097 for the alleged violation.

The Compliance Order requires Warwick Oil to complete a cathodic protection test on its tanks as required by 40 C.F.R. §280.31(b). This cathodic protection testing must be completed with 30 days of receipt of the Complaint and the results of the testing must be submitted to EPA within seven (7) days after the testing is completed.

You have the right to a hearing to contest the factual allegations in the Complaint. If you admit the allegations, or the allegations are found to be true after you have had an opportunity for

a hearing, you have the right to contest the penalty proposed in the Complaint. A copy of EPA's administrative procedures is enclosed for your review. Please note the requirements for an answer set forth in 40 C.F.R. §§22.15 and 22.38. If you wish to contest the allegations in the Complaint or the penalty proposed in the Complaint, you must file a written answer within thirty (30) days of receipt of the enclosed Complaint with the EPA Regional Hearing Clerk at the following address:

Ms. Tina Artemis, Regional Hearing Clerk (8RC)  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

If you fail to request a hearing, you will waive your right to formally contest any of the allegations set forth in the Complaint. If you fail to file a written answer or pay the proposed penalty within the time limits, a default judgement may be entered pursuant to 40 C.F.R. §22.17. This judgment may impose the penalty proposed in the Complaint.

Whether or not you request a hearing, you may confer informally with EPA concerning the alleged violations or the amount of the proposed penalty. You have the right to be represented by an attorney at any stage of the proceedings, including any informal discussions with EPA, but it is not required. A request for an informal conference does not extend the thirty (30) day period for filing your Answer and/or requesting a hearing.

If you have any questions, the most knowledgeable people at EPA regarding this matter are Richard H. Baird and Francisca Chambus. Mr. Baird is in our Legal Enforcement Program and can be reached at (303) 312-6642. Ms. Chambus is in our UST Program and can be reached at (303) 312-6782.

We urge your prompt attention to this matter.

Sincerely,

**SIGNED**

Sharon Kercher, Director  
Technical Enforcement Program  
Office of Enforcement, Compliance and  
Environmental Justice

Enclosures: Complaint and Notice of Opportunity for Hearing  
Consolidated Rules of Practice, 40 C.F.R. Part 22  
Notice of SEC Disclosure  
Small Business Information Sheet

cc: Richard H. Baird, Esq., 8ENF-L  
Francisca Chambus, 8P-W-GW  
Brenda Cazier, 8ENF-PT



**UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 8**

<b>IN THE MATTER OF:</b>	)	<b>Docket No. RCRA-08-2006-0006</b>
	)	
Warwick Oil Company	)	<b>COMPLAINT, COMPLIANCE ORDER</b>
115 Main St.	)	<b>AND NOTICE OF OPPORTUNITY</b>
Warwick, ND 55381	)	<b>FOR HEARING</b>
	)	
<b>Respondent.</b>	)	<b>Proceeding under Section 9006 of the</b>
	)	<b>Resource Conservation and Recovery Act</b>
_____	)	

**AUTHORITY**

This is a civil administrative action issued under the authority vested in the Administrator of the Environmental Protection Agency ("EPA") by Section 9006 of the Solid Waste Disposal Act as amended by, and hereafter referred to as, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6991e. The Administrator has properly delegated this authority to the undersigned EPA officials. This proceeding is governed by the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules") set forth at 40 C.F.R. part 22, a copy of which is enclosed.

**GENERAL ALLEGATIONS**

1. Subtitle I of RCRA, RCRA §§9001 - 9010, 42 U.S.C. §§6991 - 6991i, authorizes EPA to regulate the installation and use of "underground storage tanks" which contain "regulated substances."

2. EPA has jurisdiction over this matter pursuant to RCRA §9006, 42 U.S.C. §6991e and is authorized to issue an order assessing a civil penalty for any past or current violation, requiring compliance, or both, or to commence a civil action for appropriate relief in the United States District Court upon determining that any person has violated or is in violation of any requirement of the subchapter.

3. Section 9003(c) of RCRA, 42 U.S.C. §6991b(c), authorizes EPA to promulgate regulations for underground storage tanks setting forth requirements including, but not limited to, maintaining a leak detection system, release detection, prevention and correction in a manner consistent with the protection of human health and the environment. EPA has promulgated such regulations at 40 C.F.R. Part 280, subpart C.

4. Petroleum and any fraction thereof is a regulated substance as defined at RCRA §9001(2), 42 U.S.C. §6991(2).

5. EPA is the “implementing agency” as that term is used at 40 C.F.R. §280.12.

6. Respondent Warwick Oil Company is a “person”, as defined by section 1004(15) of RCRA, 42 U.S.C. §6903(15), and “owner” or “operator” within the respective meanings of RCRA §§9001(3) and (4), 42 U.S.C. §§6991(3) and (4), and 40 C.F.R. §280.12, of an “underground storage tank system” (“UST” or “tank”) as defined by RCRA §9001(1), 42 U.S.C. §6991(1), and 40 C.F.R. §280.12.

7. Respondent owns and operates two 500 gallon STIP3 tanks installed in 1990 at 115 Main Street, Warwick, ND (the “Facility”), within the exterior boundaries of the Spirit Lake Tribe on the Fort Totten Reservation. One 500 gallon tank (Tank 1) contains unleaded gasoline.

The second 500 gallon tank (Tank 2) contains unleaded plus gasoline. Both Tank 1 and Tank 2 are installed with cathodic corrosion protection systems.

8. Pursuant to 40 C.F.R. §280.31(b)(1), all owners and operators of steel UST systems which utilize cathodic corrosion protection systems must have their cathodic protection systems tested at least every three (3) years after the initial installation test to ensure proper operation. In addition, 40 C.F.R. §280.34(b)(2) requires that records of such operational testing be maintained by owners and operators of steel UST systems.

9. On July 2, 1999 EPA conducted an inspection of the Facility and its UST system. At that time it was determined by EPA that no cathodic protection tests had been conducted at the Facility. The Facility owner, Mr. Gary Elfman, was given a field citation and as a condition of settlement with EPA, Mr. Elfman tested the Facility's UST cathodic protection system on August 7, 1999 and submitted the results to EPA. Mr. Elfman was told by EPA that the Facility was required to test its UST cathodic protection system every three years and that the next test should be conducted by August 7, 2002.

10. On June 1, 2005 EPA contacted Mr. Elfman and provided him with advance notice of a planned UST inspection at the Facility by an EPA inspector. Mr. Elfman was provided a list of documents that needed to be available on site for the inspection including, but not limited to, the last 12 months of leak detection records.

11. On June 9, 2005 EPA inspector Chris Guzzetti and Sean Gourd of the Spirit Lake Tribal Environmental Office (the "Inspectors") conducted an inspection at the Facility to determine compliance with RCRA Subtitle I and the EPA regulations at 40 C.F.R. Part 280. Mr. Elfman met the Inspectors, consented to the inspection and signed EPA's Notice of Inspection.

12. During the inspection the Inspectors asked Mr. Elfman for the results of the Facility's cathodic protection test. Mr. Elfman said no CP test had been done on Tanks 1 and 2.

13. Respondent's failure to test the cathodic protection for Tank 1 and Tank 2 constitutes a violation of RCRA §9003(c), 42 U.S.C. § 6991b(c), and 40 C.F.R. §280.31(b)(1).

14. As alleged herein and pursuant to section 9006(d)(2) of RCRA, 42 U.S.C. §6991e(d)(2), and 40 C.F.R. §19.4, Respondent is liable for civil penalties up to \$11,000 per day per tank during which the violation continues.

### **PROPOSED CIVIL PENALTY**

RCRA §9006(d)(2), 42 U.S.C. §6991e(d)(2), authorizes the assessment of a civil penalty of up to \$11,000 for each UST for each day of violation. Based upon the facts alleged in this Complaint and taking into account the factors prescribed by statute, i.e., the seriousness of the violations and any good faith efforts by Respondent to comply with the applicable requirements, Complainant proposes to assess a civil penalty of \$18,097.

The proposed civil administrative penalty above has been calculated in accordance with the U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990) (Exhibit 1). This policy is used by EPA to provide a rational and consistent application of the statutory factors to the facts and circumstances of a specific case. The Penalty Calculation Worksheets for the alleged RCRA UST violation in support of the assessment of civil penalties proposed in this Complaint are attached hereto (Exhibit 2).

### **TERMS OF PAYMENT**

If Respondent does not contest the findings and penalty proposal set forth above, this action may be resolved by paying the proposed penalty in full. If such payment is made within

thirty (30) calendar days of receipt of this Complaint, then no Answer need be filed. For more time for payment, Respondent may file a statement agreeing to pay the penalty within thirty (30) days of receipt of the Complaint, then pay the money within sixty (60) days of such receipt. Payment is to be made by sending a certified or cashier's check payable to "Treasurer, United States of America," to:

EPA Region 8  
(Regional Hearing Clerk)  
Mellon Bank  
P.O. Box 360859M  
Pittsburgh, PA 15251

A copy of the check must be mailed simultaneously to:

Richard H. Baird, Senior Enforcement Attorney  
Legal Enforcement Program  
U.S. EPA Region 8 (8ENF-L)  
999 - 18th Street, Suite 300  
Denver, Colorado 80202-2466

Payment of the penalty in this manner shall constitute consent by Respondent to the assessment of the proposed penalty and a waiver of Respondent's right to a hearing on this matter.

### **COMPLIANCE ORDER**

Based upon the allegations above, and pursuant to Section 9006 of RCRA, 42 U.S.C. §6991e, Respondent is hereby ORDERED as follows:

1. To immediately comply with RCRA and its implementing regulations including, but not limited to, those requirements set forth in 40 C.F.R. Part 280, and those requirements specifically required in this Compliance Order ("Order") section of the Complaint.
2. Within 30 days of receipt of this Order to perform the cathodic protection testing



required by 40 C.F.R. §280.31(b) for Tank 1 and Tank 2, utilizing a qualified cathodic protection tester.

3. Within seven (7) days after completion of the cathodic protection testing required in paragraph 2 above, submit to EPA the results of such testing. The test results should be mailed to :

Francisca Chambus, 8P-W-GW  
U.S. Environmental Protection Agency  
999 18<sup>th</sup> Street, Suite 300  
Denver, CO 80202-2466

### **POTENTIAL LIABILITY FOR ADDITIONAL PENALTIES**

Pursuant to Section 9006 of RCRA, 42 U.S.C. §6991(e), respondents who fail to achieve compliance within the time specified in a compliance order are liable for an additional civil penalty of up to \$32,500 for each day of continued noncompliance.

### **OPPORTUNITY TO REQUEST A HEARING**

As provided in RCRA §9006(b), 42 U.S.C. §6991e(b), a respondent has the right to request a public hearing within thirty (30) calendar days after this Complaint is served. If you (1) contest the factual claims made in this Complaint; (2) wish to contest the appropriateness of the proposed penalty; or (3) assert that you are entitled to judgment as a matter of law, you must file a written Answer in accordance with 40 C.F.R. §§22.15 and 22.37 within thirty (30) calendar days after this Complaint is received.

Your answer must (1) clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint; (2) state all facts and circumstances, if any, which constitute grounds for defense; (3) state the facts intended to be placed at issue; and (4) specifically request an administrative hearing, if desired. The denial of any material fact or the

raising of any affirmative defense in your Answer shall be construed as a request for a hearing. Failure to deny any of the factual allegations in this Complaint constitutes an admission of the undenied allegations.

The answer and one copy must be sent to the EPA Region 8 Regional Hearing Clerk (8RC), 999 - 18th Street, Suite 300, Denver, Colorado 80202-2466, and a copy must be sent to the enforcement attorney listed below.

IF YOU FAIL TO REQUEST A HEARING, YOU MAY WAIVE YOUR RIGHT TO FORMALLY CONTEST ANY OF THE ALLEGATIONS SET FORTH IN THE COMPLAINT.

IF YOU FAIL TO FILE A WRITTEN ANSWER WITHIN THE 30 CALENDAR DAY TIME LIMIT, A DEFAULT JUDGMENT MAY BE ENTERED PURSUANT TO 40 C.F.R §22.17. THIS JUDGMENT MAY IMPOSE THE PENALTY PROPOSED IN THE COMPLAINT.

### **SETTLEMENT CONFERENCE**

EPA encourages the exploration of settlement possibilities through an informal settlement conference. Please note that a request for, scheduling of, or participation in a settlement conference does not extend the period for filing an answer and request for hearing as set forth above. The settlement process, however, may be pursued simultaneously with the administrative litigation procedures found in 40 C.F.R. Part 22. If a settlement can be reached, its terms shall be expressed in a written consent agreement, signed by the parties and incorporated into a final order signed by the regional judicial officer. A request for a settlement conference or any questions that you may have regarding this Complaint should be directed to the attorney listed below.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 8,  
Complainant.

Date: 25 September 2006

By: SIGNED dji  
Michael T. Risner, Director  
David J. Janik, Supervisory Attorney  
Legal Enforcement Program

Date: 25 September 2006

By: SIGNED  
Sharon L. Kercher, Director  
Technical Enforcement Program

Date: September 25, 2006

By: SIGNED  
Richard H. Baird, Senior Enforcement Attorney  
U.S. EPA, Region 8  
999 18<sup>th</sup> Street, Suite 300 (8ENF-L)  
Denver, CO 80202-2466  
Colorado Atty. Reg. No. 29718  
Telephone: 303/312-6642  
Facsimile: 303/312-6953

Exhibits

Exhibit 1 – U.S. EPA Penalty Guidance for Violations of UST Regulations (November 1990)

Exhibit 2 – Penalty Calculation Worksheets

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that the original and one copy of the COMPLAINT, COMPLIANCE ORDER, AND NOTICE OF OPPORTUNITY FOR HEARING with Exhibits 1 and 2 were hand-carried to the Regional Hearing Clerk, EPA, Region 8, 999 18th Street, Denver, Colorado, and that a true copy of the same was mailed by certified mail to:

Gary Elfman  
Warwick Oil Company  
115 Main St.  
Warwick, ND 55381

9/26/06  
Date

Judith M. McTernan  
Signature

**IF YOU WOULD LIKE COPIES OF THE ATTACHMENTS, PLEASE CONTACT THE REGIONAL HEARING CLERK.**

**THIS DOCUMENT WAS FILED IN THE REGIONAL HEARING CLERK'S OFFICE  
SEPTEMBER 26, 2006.**